

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD
4

5 INTERNATIONAL BROTHERHOOD OF
6 ELECTRICAL WORKERS, LOCAL 1245

7 Complainant,

8 vs.

9 CITY OF FERNLEY,

10 Respondent.

ITEM NO. 557

CASE NO. A1-045766

DECISION

11 For Complainant: Tom Dalzell, Esq.

12 For Respondent: James T. Winkler, Esq.
13 Littler Mendelson

14 STATEMENT OF THE CASE

15 On May 30, 2003, the International Brotherhood of Electrical Workers, AFL-CIO, Local
16 1245 (hereafter "IBEW") filed a complaint with the Local Government Employee-Management
17 Relations Board (hereafter "Board"), alleging prohibited labor practices by the City of Fernley,
18 Nevada (hereafter "Fernley"). Fernley filed an answer on June 23, 2003. Thereafter, the parties
19 filed pre-hearing statements.

20 On November 5, 2003, the Board held a hearing in this matter, noticed in accordance
21 with Nevada's Open Meeting Law, at which time the Board heard oral arguments from counsel,
22 received evidence, and heard testimony from three (3) witnesses, namely, Fernley City Manager
23 Gary Bacock, Fernley Public Works Director Kurt Kramer, and IBEW Business Representative
24 Santiago Salazar.

25 Prior to commencing the administrative hearing, discussion and oral arguments were held
26 concerning Fernley's statute of limitations arguments raised in its Pre-Hearing Statement. The
27 Board postponed its ruling until certain witnesses could be heard on the matter. The parties then
28 proceeded with their opening arguments. Inasmuch as IBEW's witnesses included Fernley's two

1 witnesses Bacock and Kramer, the parties agreed that Fernley would proceed first with those
2 witnesses rather than IBEW commencing its case-in-chief. The Board's findings are set forth in
3 the Discussion, Findings of Fact and Conclusions of Law, which follow:

4 DISCUSSION

5 Gary Bacock has been the Manager for the Town of Fernley as well as the City of
6 Fernley. He participated personally in the negotiations of two collective bargaining agreements
7 (hereafter "CBA") for Fernley with IBEW. Steve Henderson was on IBEW's negotiations team
8 for the 2002/2005 CBA. When Mr. Henderson was promoted to the position of Public Works
9 Supervisor in August 2002, he withdrew from the negotiations team since that team represented
10 certain "rank and file" non-supervisory workers for Fernley. Prior to his promotion, Mr.
11 Henderson was employed in the position of Utility Worker II as well as was a Shop Steward for
12 IBEW.

13 Through Mr. Bacock, Fernley presented its Exhibit 2, a description of Public Works
14 Supervisor dated June 2002. Presented as Fernley's Exhibit 5 were portions of the minutes from
15 Fernley City Council's meeting held on June 5, 2002, evidencing the City Council's approval of
16 various positions, including the Public Works Supervisor position. Fernley's Exhibit 7 was a
17 memorandum to Steve Henderson dated August 9, 2002, appointing him to the position of Public
18 Works Supervisor effective August 17, 2002.

19 Although correspondence was exchanged between Fernley and IBEW, IBEW never
20 formally filed a grievance concerning the duties of a Public Works Supervisor or the creation of
21 that position.

22 Mr. Bacock also testified concerning an agreement entered into by the parties after
23 mediation in 1999 (attached to Fernley's Exhibit 1), in which it was agreed that IBEW would
24 "represent all Non-Supervisory employees employed by Fernley." It was also "jointly agreed" in
25 that agreement, that "IBEW may submit a request for recognition for a Supervisory unit." The
26 Board questioned Mr. Bacock concerning the growth in number of Fernley employees and
27 whether certain other positions were filled after Mr. Henderson's promotion (e.g., the position
28 previously known as Utility Worker I).

1 Kurt Kramer testified as Public Works Director for Fernley. He testified concerning that
2 department's operations including Mr. Henderson's new duties.

3 Santiago Salazar testified on behalf of IBEW. He has been a union member for
4 approximately thirty-five (35) years. He previously worked for Sierra Pacific and performed
5 union related duties there. He admitted he was notified of the new Public Works Supervisor
6 position in June 2002. He also admitted that he was not aware of the six-month statute of
7 limitations required by NRS Chapter 288 concerning the filing of prohibited labor practices
8 complaints.

9 Mr. Salazar stated both he and Mr. Bacock were extremely busy with negotiations during
10 the relevant time frame (June 2002 to the filing of the complaint on May 30, 2003 with the
11 Board), and believed the two men agreed to postpone any discussions and/or negotiations
12 concerning the issue of the newly created Public Works Supervisor position. Mr. Salazar
13 testified he was negotiating a CBA with Sierra Pacific for IBEW at the same time he was
14 negotiating the CBA for IBEW with Fernley. He admitted that Mr. Henderson was removed
15 from the IBEW negotiations team in August 2002 due to Mr. Henderson's appointment to a
16 supervisory position. The CBA entered into between Fernley and IBEW is dated October 23,
17 2002.

18 Mr. Salazar also admitted that he saw the job description for Public Works Supervisor in
19 June 2002. It was not until March 2003 that he finally sent correspondence to Fernley
20 concerning the supervisory position and that Fernley did reply in April 2003 (IBEW's Exhibits G
21 and H). These two letters led to the filing of the complaint with the Board in May 2003.

22 Based upon the testimony and exhibits presented at the hearing and discussed
23 hereinabove, the Board then revisited the statute of limitations argument raised by Fernley and
24 granted Fernley's motion to dismiss this matter based on the fact that the complaint was filed
25 with the Board after the expiration of the six-month statute of limitations. Therefore, the Board
26 did not reach a conclusion on the merits of the underlying matter.

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1 **FINDINGS OF FACT**

2 1. A job description for the position of Public Works Supervisor was created in June
3 2002; and the IBEW was aware of that new position and the duties associated therewith.

4 2. IBEW and Fernley were in negotiations for a new CBA during the relevant time
5 frame of June 2002 through October 2002, with the CBA being executed on October 23, 2002.

6 3. Steve Henderson was appointed to the position of Public Works Supervisor
7 effective August 17, 2002, and had to withdraw as a member of the IBEW negotiating team for
8 that CBA dated October 23, 2002. IBEW was aware of that withdrawal.

9 4. Correspondence was exchanged between the parties during March and April
10 2003; however, a complaint was not filed with this Board until May 30, 2003.

11 5. Should any finding of fact be more properly construed as a conclusion of law,
12 may it be so deemed.

13 **CONCLUSIONS OF LAW**

14 1. The Local Government Employee-Management Relations Board has jurisdiction over
15 the parties and the subject matters of the complaint on file herein pursuant to the provisions of
16 NRS Chapter 288.

17 2. Fernley is a local government employer as defined in NRS 288.060.

18 3. The IBEW is an employee organization as defined by NRS 288.040.

19 4. NRS 288.110(4) states, in pertinent part, that the Board "may not consider any
20 complaint or appeal filed more than 6 months after the occurrence which is the subject of the
21 complaint or appeal."

22 5. The IBEW was put on notice of the new position as early as June 2002 and failed to
23 timely file a complaint with this Board if it felt Fernley had failed to properly negotiate with it
24 concerning this position and the duties associated therewith. Even if the Board was to consider
25 subsequent dates as the triggering date of an occurrence, e.g., Henderson's appointment date of
26 August 2002 and the CBA's execution in October 2002, the complaint filed with the Board on
27 May 20, 2003 was still filed after the expiration of the six-month limitation found in NRS
28 288.110(4).

1 6. Should any conclusion be more properly construed as a finding of fact, may it be so
2 deemed.

3 **ORDER**

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED the complaint filed by
5 IBEW in this matter is hereby dismissed based on NRS 288.110(4), without the Board having
6 made a determination on the underlying claim of alleged prohibited labor law violations by the
7 City of Fernley.

8 IT IS FURTHER ORDERED that each party shall bear their own fees and costs incurred
9 herein.

10 DATED this 14th day of November, 2003.

11 LOCAL GOVERNMENT EMPLOYEE-
12 MANAGEMENT RELATIONS BOARD

13 BY: 
14

JANET TROST, ESQ., Chairman

15 BY: 
16

17 JOHN E. DICKS, ESQ., Board Member
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